

ATTACHMENT A
Remarks

Considering the matters raised in the Office Action in the same order as raised, corrected drawing sheets in compliance with 37 CFR 1.121(d) are submitted herewith. These include formal versions of Figures 25-49 which have been objected to in the Notice of Draftsperson's Patent Drawing Review. In addition, claims 1-24 have been designated with the legend – Prior Art – as required. Further, paragraph [00124] has been amended so that reference numeral 122 is no longer referred to therein. Instead, reference is now made in paragraph [00124] to reference numeral 119, and this reference numeral has been added to Figure 24. Reference numeral 122 is no longer used in this paragraph because, as pointed by the Examiner, it is used elsewhere to designate a housing. It is respectfully submitted that the drawings as now presented should be acceptable. The assistance of the Examiner in this regard is appreciated.

Regarding the objection to the specification, while it is believed that the change proposed by the Examiner might introduce an ambiguity into the abstract (because there is no other "backrest member"), the Abstract has been amended to address the issue raised. In particular, the abstract now refers to the "first member, which is a backrest support member, ..." so that the passage is clear.

Claim 13 has been rejected under 35 U.S.C. 112, second paragraph, as being "indefinite." Claim 13 amended to overcome the objection raised. The assistance of the Examiner in this regard is appreciated.

Claims 1, 5 and 13 have been rejected under 35 U.S.C. 102(b) as being "anticipated by Annas et al. ("Annas"). This rejection is respectfully traversed although claim 1 has been amended to even more clearly defined over the Annas patent.

The Annas patent discloses a "sacroiliac rotator" wherein including a pair of adjoining Parts A and B upon which the user lies. As shown in Figures 1 and 2, motion is imparted to Part B in order to "cause relative rotation of the upper and lower portions of the body about a center falling generally in the sacroiliac region." Two different motions are provided, one in which the Part B is pivoted laterally about a first, generally vertical pivot axis as shown in Figure 1, so as to provide "a sidewise angular movement," and one in which Part B is pivoted about a transverse pivot axis indicated

at x in Figure 2 so as to provide a "hinge type up and down movement (indicated by the double-headed arrow 14 in Fig. 2) about a horizontal axis x located just beneath the part A."

It is respectfully submitted that the Annas reference does not disclose the rotational movement claimed in claim 1. Instead, as indicated above, Annas provides for "sidewise angular movement" as indicated in Figure 1 and "hinge type up and down movement" as indicated in Figure 2. Further, it is not seen that axis x is a "central pivot axis" as claimed. In any event, in order to clarify the distinction here, claim 1 has been amended to recite that the axis in question is a central, "longitudinally extending" axis and that the motorized drive means provides rotational movement of the second support member about the longitudinally extended axis. Support for this limitation is provided, inter alia, by Figures 31 and 34 and the descriptions thereof. Thus, it is respectfully submitted that claim 1 and the claims dependent thereon patently distinguish from the Annas reference.

Claim 37 has been rejected under 35 U.S.C. 102(b) as being "anticipated by Riddle et al." ("Riddle"). This rejection is respectfully traversed although claim 37 has been amended to more clearly distinguish over the Riddle patent.

The Riddle reference relates to a "continuous passive motion cervical spine therapy device" wherein a "pivoting support means" 78 is movable in a manner similar to that provided in Figure 2 of the Annas patent, i.e., in a hinge type up and down motion. Line 28-30 of Column 3 (to which the Examiner has referred) merely provide that a "pivoting support means is provided for supporting the head of a patient" which "includes a member configured to restrain a patient's head, the restraining member being slidably connected to an arm pivotally connected to the frame means." This, is of course, a reference to "pivoting support means" 78, and it is clear that only one kind of motion is provided for by Riddle. Claim 37 recites both a "motorized drive means" which provides a first "continuous passive movement" as well as "motorized cervical rotation means" which provides "continuously, cyclically repeated rotational movement" to provide "rotational movement of the neck and head of a user." Therefore, at least two different movements are provided for in claim 37, one of which is rotational movement of the neck and head.

As indicated above, the single movement provided by Riddle is similar to that shown in Figure 2 of Annas, and in order to further distinguish the claimed "rotational" movement, claim 37 has been amended to make it clear that the movement is about a "longitudinally extending" pivot axis in contrast to the transverse pivot axis disclosed by Riddle. It will be appreciated that the cervical rotational movement claimed is different from the movement provided by Riddle, and it is respectfully submitted that claim 37 patentably defines over Riddle.

It is noted that a new claim 39 has been added which provides that the claimed apparatus further comprises motorized cervical bending means for the at least one support member for, when actuated, providing continuous, cyclically repeated movement of the at least one support member in question about a further axis orthogonal to the rotational pivot axis to provide passive bending movement of the neck of a user when the head of the user is supported on the at least one support member. It is respectfully submitted that this claim further defines over the Riddle reference.

Claims 2, 3, 4, 10, 11, 14, 18, 19, 21, 26, 28, 29 and 34 have been rejected under 35 U.S.C. 102(b) as being "unpatentable over" the Annas reference "in view of Borders." This rejection is respectfully traversed.

First, is noted that the Borders patent relates to surgical table apparatus for holding the patient in various positions during the course of surgery, i.e., the table is designed only to enable parts of the patient to be moved into different positions during and/or before an operation. This is clearly not the continuous passive motion that is claimed in the claims, as is acknowledged by the Examiner ("Borders is silent as to continuous passive motion"). Further, the statement that the "controller disclosed by Borders is fully capable of continuous passive motion" is questioned. A decidedly different mechanism is required for simply moving a part of the body from one position to another, as opposed to providing continuous, cyclically repeated passive motion of a part of the body. Accordingly, it is respectfully submitted that the combination proposed here is necessarily the improper product of hindsight given the actual teachings of the two references.

More importantly, it is respectfully submitted that the independent claims here clearly define over the combination of Annas and Borders, even if it is assumed for the

sake of argument that the combination is a proper one. In this regard, Claim 14 has been amended to recite that the claimed "motor means," inter alia, selectively provides when actuated, "continuous, cyclically repeated, rotational movement of said second support member about a second, longitudinally extending pivot axis orthogonal to said first pivot axis so as to provide continuous passive rotational motion of the lumbar region of the user." The underlined portion of the quote corresponds to the amendment made to claim 14 and, as discussed above with respect to Annas, the rotational motion defined in claim 14, as amended, clearly distinguishes from that provided by Annas.

Turning to claim 26, this claim recites, inter alia, means for selectively providing pivoting of at least one support member of a body support unit relative to a stationary base and relative to second and third support members, between a first position where in, in use, the user is supported in a seated posture on the second support member of the body support unit with the upper trunk and head resting against at least one support member, and a second, substantially horizontal position wherein, in use, the user is supported in a reclining posture on said body support unit. The Examiner contends that the "modified device" of Annas and Borders selectively provides "pivoting of said at least one support member relative to the stationary base between an upright position (although inclined) and a substantially horizontal position (see Figure 2 and column 2, lines 20-25 of Annas et al.)". The lines in question merely refer to a "reverse" position wherein part B can be at the head of the table, and it is clear that, whatever the positioning, the user is intended to lie "supine or prone" (see the Abstract) on the table. No "seated posture" is contemplated by Anna. Moreover, with respect to the contention that "[f]or complete upright sitting, Borders teaches pivotal support members can be rotated through a range of +/- 90°," while, for example, some parts of the table of Borders can be raised and lowered, Borders clearly does not disclose the arrangement claimed in claim 26. Accordingly, it is respectfully submitted that claim 26 and the claims dependent thereon are patentably define over the Annas and Border references.

With respect to the other dependent claims, these claims are patentable for at least the reason set forth above in support of the claims parent thereto.

Claims 6-8 have been rejected under 35 U.S.C. 103(a) as being "unpatentable over" the Annas reference and view of a Cavanaugh et al. ("Cavanaugh") reference

while claim 9 has been rejected under 35 U.S.C. as being "unpatentable over" Annas in view of a Ragon et al. ("Ragon") reference, claim 12 has been rejected as being "unpatentable over" Annas and Borders, claim 27 has been rejected under as being "unpatentable over" a combination of Annas, Borders and Riddle, claims 35 and 36 have been rejected as being "unpatentable over" Annas in view of Borders and Cavanaugh, and claim 38 has been rejected as being "unpatentable over" Riddle in view of Borders. These rejections are respectfully traversed.

While applicant disagrees with a number of these rejections, it is respectfully submitted that these claims are patentable for at least the reasons set forth above in support of the patentability of the claims parent thereto.

The allowance of claims 22-25 is gratefully acknowledged, as is the indication that claims 15-17, 20 and 30-32 would be allowable if rewritten in independent form. Claim 15 has been rewritten in independent form as new claim 41. In addition, a new claim 40 has been added which depends from claim 14 and recites that the motor means, when actuated, selectively provides continuous, cyclically repeated pivotable movement of the second support member about a third pivot axis orthogonal to the first and second pivot axes so as to provide a continuous passive tilting motion of the lumbar region of the user. This feature is not disclosed in any of the references and thus claim 40 is allowable for this additional reason as well.

Allowance of the application in its present form is respectfully solicited.